

FCC MAIL SECTION:

**Federal Communications Commission**

DA 96-1528

SEP 17 9 37 AM '96

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Alva, Bartlesville, and  
Ponca City, Oklahoma, and  
Deerfield, Missouri)<sup>1</sup>

MM Docket No. 96-80  
RM-8758  
RM-8833

## ORDER TO SHOW CAUSE

**Adopted: September 6, 1996**

**Released: September 13, 1996**

By the Chief, Allocations Branch

1. The Commission issued a Notice of Proposed Rule Making, 11 FCC Red 4663 (1996), proposing the allotment of Channel 261C3 to Deerfield, Missouri, as that community's first local service at the request of Dale Hendrix ("Hendrix").<sup>2</sup> In response to the Notice, a counterproposal was filed by KYFM Radio, Inc. ("KYFM Radio") requesting the substitution of Channel 261C1 for Channel 260C3 at Bartlesville, Oklahoma, and modification of the license for Station KYFM to specify operation on Channel 261C1.<sup>3</sup> To accommodate the upgrade at Bartlesville, KYFM Radio also proposes the substitution of Channel 284A for Channel 261A at Ponca City, Oklahoma, and the license for Station KIXR(FM) be modified accordingly and the substitution of Channel 278C1 for vacant Channel 284C1 at Alva, Oklahoma. KYFM Radio suggested the allotment of Channel 264C3 to Deerfield in lieu of Channel 261C3 to accommodate both proposals.

2. In order for us to proceed with our analysis of the upgrade at Bartlesville, Oklahoma, it is necessary to issue an Order to Show Cause to Station KIXR, Ponca City, Oklahoma, why its

<sup>1</sup> The communities of Alva, Bartlesville and Ponca City, Oklahoma, have been added to the caption.

<sup>2</sup> This petition was originally filed as a counterproposal in MM Docket No. 95-179 (10 FCC Rcd 11378 (1995)). However, since the proposed allotment at Deerfield was not in conflict with the communities in Docket 95-179, we denied its acceptance in that proceeding and accepted the proposal as a new rulemaking petition.

<sup>3</sup> Public notice of the counterproposal was given on July 8, 1996, Report No. 2140 (RM-8833).

license should not be modified to specify operation on Channel 284A in lieu of its present Channel 261A. KYFM Radio has stated its intent to reimburse Station KIXR for its reasonable expenses incurred in connection with the change in frequency. We will not accept any additional counterproposals because an opportunity has already been provided for the filing of such proposals. Further, although this Order affords Station KIXR an opportunity to object to the proposed channel change, it does not afford an additional opportunity to comment on the merits of the proposals set forth in the Notice of Proposed Rule Making or the proposal advanced in KYFM Radio's counterproposal. See Angola, Indiana, et al., 5 FCC Rcd 2000 (1990).

3. Channel 284A can be allotted to Ponca City, Oklahoma, in compliance with the Commission's minimum distance separation requirements at Station KIXR's presently licensed transmitter site.<sup>4</sup>

4. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Mur-Thom Broadcasting, Inc., licensee of Station KIXR, Ponca City, Oklahoma, SHALL SHOW CAUSE why its license SHOULD NOT BE MODIFIED to specify operation on Channel 284A as proposed herein instead of the present Channel 261A.

5. Pursuant to Section 1.87 of the Commission's Rules, Mur-Thom Broadcasting, Inc., may, not later than November 4, 1996, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Mur-Thom Broadcasting, Inc. to furnish additional information. If Mur-Thom Broadcasting, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Mur-Thom Broadcasting, Inc. will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

6. IT IS FURTHER ORDERED, That the Secretary SHALL SEND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Order to Show Cause to the licensee of Station KIXR as follows: Mur-Thom Broadcasting, Inc., P. O. Box 2631, Ponca City, Oklahoma 76402.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

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<sup>4</sup> The coordinates for Channel 284A at Ponca City, Oklahoma, are 36-47-19 and 97-02-53.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.